

### **III. REMARKS**

United States Serial No. 10/534,606 was filed on February 22, 2006. The present patent application is a national stage patent application of International Application No. PCT/EP2002/013328 filed 25 November 2002. Claims 1, and 4-22 are pending. Claims 1, 4-5, 10, 13-14, and 16-19 have been amended. Claims 2-3 have been cancelled. Claim 22 is new. In view of the amendments and remarks set forth herein, Applicants respectfully request favorable reconsideration of the application, and earnestly solicit allowance of claims 1, and 4-22.

#### **Allowable Subject Matter**

Applicants acknowledge that claims 5, 10, 13, 17, and 19 are deemed allowable if rewritten in dependent form and including all of the limitations of the base claim and any intervening claims.

With the current amendment of claim 1 to incorporate the subject matter of claim 3, the amendment of claims 10 and 13 to incorporate the subject matter of claim 1 as previously presented, and the amendment of the dependency of claims 14, and 16-18, it is respectfully submitted that the objection to at least claims 5, 10, and 13-19 should be withdrawn, and an indication of allowance of these claims be issued.

Following the above amendments, there are pending in the present application three (3) independent and twenty (20) total claims, previously paid for. No excess claim fees are due with the filing of this Response.

#### **35 U.S.C. §102**

Claims 1, 3-4, 6-9, 11-12, 14-16, 18, and 20-21 have been rejected under 35 U.S.C. §102(b) as being anticipated by EP 0 640 384 A1 to Diez et al. It is specifically alleged that

Diez et al. teach a nonionic defoaming agent (glycol species) and a polyethylene oxide derivative with one terminal ionic end and one terminal branched hydrocarbon end. The Office Action also alleges that Diez et al. teach that the glycol species is dipropylene glycol monomethyl ether.

Applicants respectfully traverse this rejection. Applicants have incorporated the subject matter of claim 3 into claim 1, which now recites that the polyethylene oxide derivative has a hydrophobic group comprising a branched structure and an unsaturated (double) bond. "A finding of anticipation requires that the publication describe all of the elements of the claims, arranged as in the patented device." *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1349 48 USPQ2d 1225, 1230 (Fed. Cir. 1998). Diez et al. disclose "a foaming agent having improved performance comprised of a mixture of anionic active oligomers of alkyl sulfates and alkyl ether sulfates which have the general formula  $R(OCH_2CH_2)_ySO_3M$ ." (See p. 1, lines 2-3). Diez et al. do not disclose unsaturated polyethylene oxide structures (i.e., compounds with double bonds as is claimed by the instant invention). Diez et al. merely disclose hydrocarbon compounds bearing alkyl groups – no alkene groups are disclosed whatsoever. The subject matter of claim 1 is novel over Diez et al. since this reference does not disclose a defoaming agent for cementitious compositions comprising a polyethylene oxide derivative of formula I having an end hydrophobic group X with a branched structure and an unsaturated double bond; an anionic end group Y, and a polyoxyethylene structure of 6 to 100 units. Accordingly, Diez et al. do not anticipate the subject matter of claim 1 and the claims depending therefrom.

The express language in Diez et al. cannot be ignored. As additionally distinguishing Diez et al. from the claimed subject matter, in Examples 1 to IV of Diez et al. (see pp. 5-6, lines 19-58, 1), all of the foaming agents that were tested had the general molecular formula of  $R(OCH_2CH_2)_ySO_3M$  cited above. Consequently, a defoaming agent for cementitious compositions comprising a mixture of at least one polyethylene oxide derivative and at least one nonionic defoaming agent, wherein the polyethylene oxide derivative is a compound expressed by the formula  $X-(EO)_n-Y$ , in which X is a hydrophobic group comprising a

branched structure and an unsaturated bond, wherein the unsaturated bond is a double bond, is not disclosed in Diez et al. Rather, Diez et al. is fundamentally different in that it discloses only saturated polyethylene oxide compounds comprised of alkyl structures.

As stated above, Diez et al. do not disclose a defoaming agent comprising a polyethylene oxide derivative of formula I, wherein a is an integer from 6 to 100. In contrast, Diez et al. discloses a foaming agent for gypsum boards, wherein the foaming agent comprises a polyethylene oxide oligomer in which the average number of mols of ethylene oxide "y" per mol of the hydrocarbon  $R_x$  is between 0.4 and 1.3. (See p. 5, lines 9-12). Even in comparative examples, y was not disclosed to be greater than 5. For this reason, the polyethylene oxide oligomer disclosed by Diez et al. further differs structurally from the polyethylene oxide derivative as defined in claim 1, wherein a is an integer from 6 to 100. Therefore, Applicants respectfully request withdrawal of this rejection.

Claims 4, 6-9, 11-12 and 20-22 ultimately depend from independent claim 1 and therefore include all of its features. Applicants therefore respectfully request that the rejection of claims 1, 4, 6-9, 11-12 and 20-22 under 35 U.S.C. §102(b) as being anticipated by EP 0 640 384 A1 to Diez et al. be withdrawn.

### Conclusion

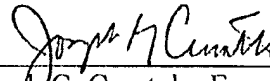
In view of the above amendments and remarks, Applicants respectfully request reconsideration of the application, withdrawal of the rejection under 35 U.S.C. § 102, and request the issuance of a formal Notice of Allowance directed to claims 1, and 4-22.

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Should the Examiner have any questions regarding the present amendments and remarks, Applicants' undersigned attorneys would welcome a telephone call.

Respectfully submitted,



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